

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

PHILIP YOUTIE	:	CIVIL ACTION
	:	
v.	:	
	:	
MACY'S RETAIL HOLDING, INC.,	:	NO. 07-3182
and	:	
MACY'S, INC.	:	

ORDER

AND NOW, this 5th day of June 2009, upon consideration of defendants' Macy's Inc. and Macy's Retail Holdings, Inc. motions for summary judgment on plaintiff Philip Youtie's claims (No. 33), plaintiff's response and cross-motion for summary judgment (No. 40), defendants' reply, plaintiff's reply in support of his cross-motion for summary judgment on his claims and defendants' sur-reply thereto, and defendants' motion for partial summary judgment (No. 43) on some of its counterclaims, plaintiff's response and defendants' reply thereto and for the reasons set forth in the accompanying memorandum of law, it is ORDERED that:

1. Defendants' motion for summary judgment on plaintiff's claims of breach of contract and violations of the Pennsylvania Wage Payment and Collection Law, 43 P.S. § 260.1 et seq. is GRANTED. Accordingly, plaintiff's motion for summary judgment on these claims is DENIED. Pursuant to Rule 54(b) and finding that there is no just reason for delay, judgment is entered in favor of defendants Macy's Inc. and Macy's Retail Holdings, Inc. and against plaintiff Philip Youtie on plaintiff's claims against defendants.

2. Plaintiff's motion for summary judgment on defendants' counterclaims of misappropriation of trade secrets and/or confidential and proprietary information, breach of

fiduciary duty and duty of loyalty, unjust enrichment and unfair competition with regards to plaintiff's request and disclosure of "first cost" data is DENIED without prejudice. Defendants' motion for summary judgment on their counterclaims of misappropriation of trade secrets and/or confidential and proprietary information and breach of fiduciary duty and duty of loyalty with respect to plaintiff's request and disclosure of "first cost" data is DENIED without prejudice. Defendants may file an amended counterclaim complaint adding a claim under the Pennsylvania Uniform Trade Secrets Act (PUTSA), 12 Pa. Cons. Stat. Ann. § 5301, et seq. (2004) within 15 days of the date of this order. Plaintiff and defendants may submit simultaneous motions for summary judgment on these claims within 15 days of the date of this Order to brief whether the "first cost" data qualifies as a trade secret, the merits of a claim under the PUTSA, the merits of the alternative claims with the relevant choice of law analysis and the appropriate relief available.

3. Defendants' motion for summary judgment on their breach of contract claim for plaintiff's request and disclosure of "first cost" data is GRANTED. Accordingly, plaintiff's motion for summary judgment on this claim is DENIED. A hearing will be scheduled to determine damages.

4. Plaintiff's motion for summary judgment on defendants' breach of contract, breach of fiduciary duty and duty of loyalty and tortious interference with business and employment relations with respect to plaintiff's introduction of David's Bridal employee Linda Shaps-Shanin to Steven Erlbaum is GRANTED. Accordingly, defendants' motion for summary judgment on their counterclaims of breach of contract, and breach of fiduciary duty and duty of loyalty with respect to plaintiff's introduction of Shaps-Shanin to Erlbaum is DENIED.

5. Plaintiff's motion for summary judgment on defendants' request for injunctive relief is

DENIED without prejudice. Plaintiff and defendants may submit simultaneous motions regarding the request for injunctive relief within 15 days of the date of this Order.

/s/ THOMAS N. O'NEILL, JR.
THOMAS N. O'NEILL, JR., J.